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Office Supreme Court, U.S.
FILED
JUN 10 1929
CHARLES ELMORE CROPLEY
CLERK

No. 104.

In the Supreme Court of the United States

October Term, 1929.

NATIONAL FIRE INSURANCE COMPANY OF HARTFORD,
Appellant,

vs.

JOSEPH B. THOMPSON, Superintendent of the Insurance Department of the State of Missouri, and STRATTON SHARTEL, Attorney General of the State of Missouri,
Appellees.

APPELLANT'S STATEMENT AS TO JURISDICTION ON APPEAL.

ROBERT J. FOLONIE,
WILLIAM S. HOGSETT,
JOHN S. LEAHY,
ASHLEY COCKRILL,
Solicitors for Appellant.

SMITH-GRIEVES, LAW PRINTERS, KANSAS CITY, MO.

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May it please the Court:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

The jurisdiction of this Court is sustained by the following statutory provisions:

Section 266 of Judicial Code as amended by Act of February 13, 1925 (Section 380 of Title 28, U. S. Code).

Section 238 of Judicial Code as amended by Act of February 13, 1925 (Section 345 of Title 28, U. S. Code).

Section 266 of Judicial Code as amended by Act of February 13, 1925 (Sec. 380 of Title 28, U. S. Code), provides in part as follows:

> "Sec. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state, shall be issued or granted by any justice of the Supreme Court, or by any District Court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such

application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, that one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the state, and to such other persons as may be defendants in the suit: Provided, that if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. * * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. * * *"

Section 238 of Judicial Code as amended by Act of February 13, 1925 (Sec. 345 of Title 28, U. S. Code), provides in part as follows:

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections and not otherwise:

* * * * * * * *

(3) Section 380 of this title.

* * * * * * * *"

B.

Date of Order Reviewed and Date of Application for Appeal.

The order sought to be reviewed was entered on the 13th day of April, 1929 (R. 60-61).*

The application for appeal was presented on the 26th day of April, 1929 (R. 62-64).

C.

Nature of Case and Ruling Below.

This is a suit in equity to restrain the enforcement, operation and execution of a statute of Missouri (Section 6283, R. S. Mo. 1919), by restraining the action of the Superintendent of the Insurance Department and the Attorney General of Missouri in the enforcement and execution of said statute, and in the enforcement and execution of a rate reduction order made by said Superintendent of the Insurance Department acting under and pursuant to said statute (R. 2-13, 21-24), on the ground of the unconstitutionality of said statute (R. 7-13, 23). Said order of the Superintendent was an order of "an administrative board or commission" within the meaning of Sec. 266 of Judicial Code (*Moore v. Fidelity & Deposit Co.*, 272 U. S. 317, 320). This appeal comes direct to this Court from the order of the United States District Court for the Western District of Missouri (three judges sitting), which court after notice and hearing denied an interlocutory injunction in said cause (R. 60-62).

*All references to the Record are to the pages of the certified unprinted Record prepared by the Clerk of the United States District Court for the Western District of Missouri and on file with the Clerk of this Court. The Record has not yet been printed.

The suit is one by the appellant, the National Fire Insurance Company of Hartford, against the appellees, the Superintendent of the Insurance Department and the Attorney General of Missouri, to enjoin the enforcement of an order of the Superintendent promulgated October 9, 1922, reducing insurance rates in Missouri 10 per cent (R. 2-12, 21-24). The District Court had jurisdiction because the amount involved exceeds $3000.00 (R. 3), appellant is a citizen of Connecticut while appellees are citizens of Missouri (R. 2-3), and questions arise under the Fourteenth Amendment (R. 7-8, 9-13, 21-22).

By appellant's verified bill the rate order is attacked as confiscatory and in violation of the due process clause of the Fourteenth Amendment (R. 7-8, 41); and the rate statute aforesaid is attacked as being in violation of the due process clause (R. 8-9, 10, 11, 12, 13, 23) and the equal protection clause (R. 9, 12, 13, 23) of the Fourteenth Amendment. The bill prayed for a temporary restraining order, interlocutory injunction and permanent injunction restraining appellees from enforcing the order (R. 23-24). In addition a separate application for interlocutory injunction was filed (R. 29, 44).

Upon the verified bill the judge of the District Court, finding that irreparable loss and damage would result to the complainant unless a temporary restraining order was granted (R. 27), granted such order restraining appellees from enforcing the rate order until the hearing and determination of the application for an interlocutory injunction upon notice (R. 27-29, 33). More than five days' notice of the hearing was given to the Governor and Attorney General of the State and to the defendants (R. 29, 44, 111).

The hearing upon the application for interlocutory injunction was had (all parties appearing) before three judges (R. 61, 78) in accordance with Section 266 of Judicial Code as amended by Act of February 13, 1925 (Section 380, Title 28, U. S. Code), and an order was entered denying an interlocutory injunction, without prejudice to plaintiff's right to renew its application upon a showing that it has repaid the excess of 10 per centum collected on premiums for fire, lightning, hail and wind storm insurance on Missouri business since November 15, 1922, and up to the date of the renewal of such application (R. 61). From the order denying interlocutory injunction the appellant within thirty days (R. 60-62) applied for (R. 63-64) and was allowed (R. 70) a direct appeal to this Court.

D.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Ohio Oil Co. v. *Conway,* 49 Sup. Ct. Rep. 256.
United Fuel Gas Co. v. *Public Service Commission of West Virginia,* 49 Sup. Ct. Rep. 157.
Tyson and Brother v. *Banton,* 273 U. S. 418, 428.
Herkness v. *Irion,* 49 Sup. Ct. Rep. 40, 41.
Rail & River Coal Co. v. *Yaple,* 236 U. S. 338, 342.
St. Louis-San Francisco Ry. Co. v. *Middlekamp,* 256 U. S. 226, 228-229.
Ohio Tax Cases, 232 U. S. 576, 578.
Clark v. *Poor,* 274 U. S. 554, 556.
Ex parte Buder, 271 U. S. 461, 464-5.
Board of Public Utility Commissioners v. *New York Telephone Co.,* 271 U. S. 23, 26.

Lawrence v. *St. Louis-San Francisco Ry. Co.*, 274 U. S. 588, 589-590.
Interstate Busses Corporation v. *Blodgett*, 276 U. S. 245, 249.
Banton v. *Belt Line Ry.*, 268 U. S. 413, 415.
Airways Electric Appliance Corp. v. *Day*, 266 U. S. 71, 79-80.
Wallace v. *Hines*, 253 U. S. 66, 67.
Looney v. *Crane Co.*, 245 U. S. 178, 186-7.
Rast v. *Van Deman*, 240 U. S. 342, 351.
Gilchrist v. *Interborough Rapid Transit Co.*, 49 Sup. Ct. Rep. 282.
Williams v. *Standard Oil Co.*, 49 Sup. Ct. Rep. 115, 116.
Cline v. *Frink Dairy Co.*, 274 U. S. 445, 449, 451.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Sections 238 and 266 of Judicial Code as amended by the Act of February 13, 1925 (Sections 345 and 380 of Title 28, U. S. Code).

Respectfully submitted,

ROBERT J. FOLONIE,
WILLIAM S. HOGSETT,
JOHN S. LEAHY,
ASHLEY COCKRILL,
Solicitors for Appellant.